

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LARRY SCOTT,)
Petitioner,)
v.) Civil Action
MARTY C. ANDERSON, Warden, United) No. 10-3347-CV-S-ODS-H
States Medical Center for Federal Prisoners,)
Respondent.)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, has petitioned this Court for a writ of habeas corpus in which he challenges disciplinary action taken against him at the Medical Center. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to exhaust administrative remedies, it will be recommended that he be denied leave to proceed in forma pauperis.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse.

As grounds for relief in habeas corpus, petitioner contends that the staff at the Medical Center failed to protect his safety. According to respondent, petitioner has failed to fully exhaust administrative remedies on the issues raised in this petition.

The law is clear that an inmate cannot pursue a cause of action regarding prison conditions until exhaustion of administrative remedies has been completed under the Prison Litigation Reform

Act. 42 U.S.C. § 1997 e (a); Foulk v. Charrier, 263 F.3d 687, 696 (8th Cir. 2001). Because a review of the record indicates that petitioner has failed to fully exhaust administrative remedies, it must therefore be recommended that the petition herein for a writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate

Date: November 30, 2010

¹ Petitioner has 14 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.